

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20240009237

APPLICANT REQUESTS:

- his under other than honorable conditions discharge be upgraded to an honorable discharge
- restoration of his rank/grade to specialist (SPC)/E-4
- a personal appearance before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states that he did nothing wrong. His chain of command wanted him to testify against his roommate but refused to do so. He had a good service record up to that point and he had never been in trouble with the law prior to this incident. His attorney instructed him to request the type of discharge as shown on his discharge document. He does not want any entitlement or benefits as he makes a good living. He just wants his rank restored and an honorable discharge for his own piece of mind.
3. He enlisted in the Regular Army on 6 December 1983. He was promoted to the rank/grade of SPC/E-4 effective 1 October 1985.
4. His records are void of a separation packet containing the specific facts and circumstances surrounding his discharge process. However, his record contains a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) which he authenticated at the time of his separation. This document identifies the authority and reason for his discharge.

5. Orders 84-5, issued by the U.S. Army Regional Personnel Center, Kitzingen, Germany on 8 April 1986 show he was reduced from SPC to private/E-1 effective 3 April 1986. It further reassigned him to the separation point and ordered his discharge on 18 April 1986.

6. His DD Form 214 shows he was discharged on 18 April 1986, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. It further shows:

- he was discharged in the rank/grade of private/E-1
- his service was characterized as under other than honorable conditions
- he completed 2 years, 4 months, and 13 days of net active service this period

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

- Upgrade his under other than honorable conditions discharge to honorable. Deny: Although the Board notes that the applicant's separation documentation was not in his record, they determined that at the time of the applicant's discharge, his DD Form 214 reflected and he acknowledged that he was being discharged in lieu of a trial by court-martial with an under other than honorable discharge; therefore, the Board found no error or injustice and determined relief was not warranted and denied relief.
- Restoration of his rank/grade to specialist (SPC)/E-4. Deny: Although the Board notes that the applicant's separation documentation was not in his record, they determined that at the time of the applicant's discharge, his DD Form 214 reflected and he acknowledged that he was being discharged in lieu of a trial by court-martial with an under other than honorable discharge and was reduced to E-1; therefore, the Board found no error or injustice and determined relief was not warranted and denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 20 July 1984 and in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be

given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

e. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//